

Appl. No. 10/721,125  
Amdt. dated April 7, 2008  
Reply to Office action of Dec. 6, 2007

Patent  
Docket No. UC-3

## **REMARKS/ARGUMENTS**

### **Office Action Summary**

Claims 1-17 and 19-32 are pending in the application. Claims 1-7 and 19-32 stand rejected under 35 U.S.C. § 103(a) as being obvious under US published patent application number US2004/0235521 ("Pradhan et al.") in view of US published patent application number US2004/066776 ("Ishidoshiro"), US patent number US 7,248,572 (Bender et al.), and in further view of US published patent application US2002/0132616 ("Ross et al."). Applicant is unaware of any other rejections or objections pending in the application.

### **Amendments to the Claims**

Independent apparatus Claim 1 has been amended to particularly recite that the remote device is a digital audio file reproduction device, in addition to the claimed apparatus, which is also a digital audio file reproduction device. Similarly, independent method Claim 19 has been amended to particularly recite that both the first device and second devices are digital audio file reproduction devices. Also, that these devices are able to output analog audio signals that correspond to a digital audio file. In more simple terms all of these devices are digital audio players.

Dependent claims 9, 10, 13, 17, 20, 23, 24, 26, 30, 31, and 32 have been amended such that all antecedent basis are correct in view of the amendments to the independent claims.

Applicant takes this opportunity to remind the Examiner that the previous amendments to the claims were directed to reciting the structure and functions whereby the link request and in range signal communication establish a radio communication link between the digital audio file reproducing devices, which enables the automatic execution of a bidirectional exchange of digital audio files using a radio protocol therebetween.

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### **Rejections of Claims 1 and 19 under 35 U.S.C. § 103(a)**

Applicant respectfully traverses the rejection of independent Claims 1 and 19 as being obvious under Pradhan et al. in view of Ishidoshiro and Bender et al, and in further view of Ross et al. This combination of references does not teach, or fairly suggest, each and every element and limitation of the independent claims, as amended. The combination of these references is improper because certain references teach away from combination. In addition, it is the Applicant's position that the teachings of Bender et al. constitutes non-analogous art.

The Pradhan et al. reference teaches transfer of media files based on a secured access system. Essentially, one device request media from another, which is only transferred if the exchange is secured against fraudulent access to the media using access rights protected with an encryption and decryption process. This concept is calculated to insure payment of a fee for rights to the desired media, thereby avoiding copyrighted material piracy, etc. It is essentially a non-automatic process in that there must be verification of the receiving terminals access privileges in order for the transaction to occur. As noted in the Examiner's rejection, there is no teaching of suggestion of the use of a periodically transmitted link request and responsive in range signal in the Pradhan et al. reference. The rejection goes on to assert that Ishidoshiro teaches the claimed periodically transmitted link request.

### **Ishidoshiro Does Not Teach a Periodic Link Request**

Ishidoshiro fails to teach or suggest a periodically transmitted link request and responsive in-range signals. The Ishidoshiro reference is directed to an Internet Protocol (IP) telephone system (VOIP) that couples advertising information from a wireless base station to IP telephone sets as a means to defray system operating costs (see Abstract). Referring to Figure 8, it is noted that Ishidoshiro starts the advertisement transmission

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upon initiation of a telephone call, which may either be an incoming or outgoing call. The advertisement data is reproduced prior to the telephone conversation itself. In other words, the party to the call is exposed to the reproduced advertisement data as a predicate to participating in the desired telephone conversation. In particular, at paragraph [0009], Ishidoshiro teaches that "a transmission module that transmits the announcement information storage module to the client computer as a present timing in the process of mediating communications of the audio information between the client computer and the wide area network." Emphasis added. In other words, the communication of the advertisement information occurs at a predetermined time during the connection of the client computer (telephone) to the wide area network (Internet) in connecting a VOIP call. A call cannot even be initiated unless the telephone terminal is already in range. The communication of the advertising data is does not occur in response to an in-range signal, as claimed. Thus, the Ishidoshiro reference fails to satisfy the teachings for which it is relied upon. In addition, the use of a preset time at which advertising data is transmitted within a telephone call connection process teaches away from combination with Pradhan et al. in that that Pradhan et al. system is a security clearance procedure that occurs asynchronously, and that would not function if the communication was required to occur at a predetermined time. The rejections are therefore improper and should be withdrawn.

#### **Bender et al. in Non-Analogous Art**

The Examiner notes in the rejection that none of the other cited references teach the bidirectional exchange of digital audio files. Bender et al. is called upon to provide such a teaching. However, the present invention is directed to a pair of digital audio file reproduction devices that exchange digital audio files using a radio protocol. Bender et al. is directed to a wireless packet data network (Col. 1, lines 13-14). As noted in the section referenced by the Examiner (Col. 5, line 44 to Col. 6, line 14), that network include multiple routers for wireless packet data using a plurality of network access points (basically wireless transmitters), with a large number of terminal devices roaming

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and accessing these sites. As is well known, such networks function according to a complex protocol involving call hand-off as terminal roam, network routing of traffic to roaming terminals and a complex protocol overhead, etc. While the Applicant acknowledges that wireless networks are capable of supporting bidirectional communications, it is asserted that the dramatic difference between sharing digital audio files between two players and those of a wide area wireless network render the Bender et al. reference non-analogous. It is extremely unlikely that one skilled in the art and addressing the problems addressed in the present invention would consider Bender et al. a reasonable source of pertinent teachings. Wireless networks are huge, complex systems, and the nature of bidirectional communications is not from terminal to terminal directly, as claimed in the present invention, but rather involves routing packet data through a complex network. Thus, applicant respectfully submits that the combination is improper and should be withdrawn.

#### **Dependent Claims**

Since the rejection of independent Claims 1 and 19 have been shown to be improper, and all of the dependent claims depend from either independent Claim 1 or independent Claim 19, which are both now in condition for allowance, it is well settled law that each of the dependent claims are also in condition for allowance. Such action by the Examiner is courteously solicited.

#### **Conclusion**

The foregoing is submitted as a full and complete response to the Office Action mailed December 6, 2007. The Applicant believes that the same places the present application in condition for allowance. Reconsideration by the Examiner and allowance of the claimed invention is hereby courteously solicited.

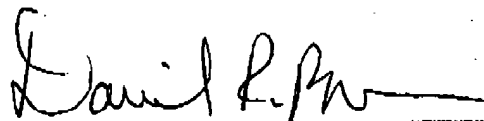
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Since the total number of claims in the Application is unchanged, it is Applicant's belief that no fees, other than the aforementioned extension of time fee, are presently due in the application. In the event that the Examiner determines otherwise, the Commissioner is hereby authorized to charge such additional fees, excluding the Issue Fee, to Daniel R. Brown Deposit Account No. 501507.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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